(2)

No. 91-1030

In The
Supreme Court of the United States
October Term, 1991

PAMELA WITHROW,
Petitioner,

vs

ROBERT ALLEN WILLIAMS, JR.,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR THE
SIXTH CIRCUIT

MOTION TO FILE BRIEF
AND
BRIEF AMICI CURIAE OF
AMERICANS FOR
EFFECTIVE LAW ENFORCEMENT, INC.,
JOINED BY
THE NATIONAL DISTRICT
ATTORNEYS ASSOCIATION, INC.
IN SUPPORT OF THE PETITIONER.

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MOTION OF AMICI
CURIAE TO FILE BRIEF
AND BRIEF.

This motion and brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by Counsel for the Petitioner. Consent to file has been declined by Counsel for the Respondent. The letters of Petitioner and Respondent have been filed with the Clerk of this Court, as required by the Rules.

Come now Americans for Effective Law Enforcement, Inc., and the National District Attorneys Association, Inc., and move this Court for leave to file the attached brief as *amici curiae,* and declare as follows:

1. *Identity and Interest of Amici Curiae.* The *amici curiae* are described as follows:

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* over eighty-five times in the Supreme Court of the United States and over thirty-five times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

The National District Attorneys Association, Inc. (NDAA), is a nonprofit corporation and the sole national membership organization representing state and local prosecuting attorneys in America. Since its founding in 1950, NDAA's programs of education, training, publication, and *amicus curiae* activity have carried out its guiding

purpose of reforming the criminal justice system for the benefit of all of our citizens.

2. *Desirability of an Amici Curiae Brief. Amici* are professional associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of adopting and implementing guidelines for the conduct of interrogations; and (2) prosecutors, county counsel and police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters and to prosecute cases involving evidence obtained thereby, and to represent local and state authorities in federal habeas corpus proceedings.

Because of the relationship with our members, and the composition of our membership and directors—including active law enforcement administrators and counsel at the state and national level—we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court. We respectfully ask this Court to consider this information in reaching its decision in this case.

3. *Reasons for Believing that Existing Briefs May Not Present All Issues.* AELE and NDAA are state and national associations, and their perspective is broad. This brief concentrates on policy issues, including the values served by the adoption of reasonable rules for guiding police conduct in the law of interrogation and the need for finality in the criminal justice system, including the need for the reform of federal habeas corpus jurisdiction. Although Petitioner is clearly represented by capable and diligent counsel, no single party can completely develop all relevant views of such issues as these.

4. *Avoidance of Duplication.* Counsel for *amici curiae* has reviewed the facts of this case and has conferred at length with counsel for Petitioner in an effort to avoid unnecessary duplication. It is believed that this brief presents vital policy issues that are not otherwise raised.

5. *Consent of Parties or Requests Therefor.* Counsel has requested consent of the parties. The consent of Petitioner has been received and filed with the Clerk of this Court. This Motion is necessary because the Respondent has declined to grant consent to *amici*.

For these reasons, the *amici curiae* request that they be granted leave to file the attached *amici curiae* brief.

Respectfully submitted,

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INTEREST OF AMICI CURIAE

See Section on Identity and Interest of *Amici Curiae, supra.*

STATEMENT OF FACTS

The court below, *Williams v. Withrow,* 944 F.2d 284 (6th Cir. 1991), ruled that the federal district court had correctly decided, contrary to the findings of state courts in the defendant's case, that the defendant, suspected of murder, was "in custody" for interrogation purposes when police officers came to his house, searched him, transported him in an unmarked police car to the police station, and repeatedly conveyed to him that his options were to cooperate or go to jail; that his inculpatory statements made after this point but before the advice of rights was given to him should have been suppressed because of the failure of the police to give the warnings required by *Miranda v. Arizona,* 384 U.S. 436 (1966); and, further, that the inculpatory statements defendant made after receiving warnings were the result of police officers' promises that he would be freed and treated with leniency if he talked and their threats of imprisonment if he did not and, therefore, should have been suppressed as involuntary, under *Oregon v. Elstad,* 470 U.S. 298 (1985).

The Court of Appeals further ruled that the error in admitting the statements was not harmless beyond a reasonable doubt and, therefore, the district court's grant of habeas relief was affirmed.

In considering this brief of *amici curiae,* it is important to note that only two principal issues were presented to and ruled upon by the state appellate court. *People v. Williams,* 171 Mich. App. 234, 429 N.W.2d 649 (1988). The court held (1) that at the time of the police interrogation of the defendant he was not in custody for *Miranda* purposes, and

(2) that he did not establish, as ineffectiveness of counsel, the failure to communicate to him a plea offer made to counsel by the prosecutor. One of the three appellate justices dissented, but only with regard to the plea offer issue.

Upon appeal to the Michigan Supreme Court a remand was ordered for a finding by the trial court regarding the plea offer conversations between defense counsel and the prosecutor, and whether defense counsel reported the contents of the conversation to the defendant. Later, the Michigan Supreme Court denied the appeal because it "was not persuaded that the questions presented should be reviewed . . ." Certiorari was denied by this Court. *Williams v. Michigan,* 493 U.S. 956 (1989).

ARGUMENT

I

FEDERAL HABEAS CORPUS IS NOT WARRANTED WITH REGARD TO A *MIRANDA* PROPHYLACTIC RULE VIOLATION LITIGATED IN STATE COURT.

A determination of whether or not a person was in custody, so as to mandate the issuance of *Miranda* warnings, does not require an enlargement of the basic principle of federal habeas corpus. Certainly that issue is not deserving of any more consideration than a determination, already made by this Court, with regard to the status of physical evidence seized by the police. In neither situation is there the specter of evidence unreliability and the consequence of convicting an innocent person. The rationale of *Stone v. Powell,* 428 U.S. 465 (1976), is equally applicable to both—no federal habeas corpus once a defendant has had a full and fair opportunity to present his claim for review by the highest tribunal of a state.

Only where a state fails to provide and apply adequate measures within its appellate process to provide for a review of a defendant's constitutional violation claims should there be any federal intervention by means of habeas corpus. We here wish to call to this Court's attention that confession involuntariness was not raised in the defendant's appeal to the Michigan Appellate Court.

Amicus NDAA has long sought reform of this type of abuse of federal habeas corpus jurisdiction and has actively supported the need for federal legislation to accomplish this goal. In the absence of such legislation, *amici* submit that the continuing efforts of this Court to achieve reform of federal collateral review jurisdiction, with the latest example in *Keeney v. Tamayo-Reyes,* __ U.S. __, 112 S.Ct. __, 51 CrL 2069 (May 4, 1992), is the criminal justice system's best hope for achieving this needed reform. We respectfully request this Court to extend the rule of *Stone v. Powell* to Fifth Amendment-*Miranda* claims.

II

EVEN IF FEDERAL COLLATERAL REVIEW WERE ALLOWED, DEFENDANT'S CONFESSION, AFTER WARNINGS, WAS NOT RENDERED INVOLUNTARY BECAUSE OF THE INTERROGATOR'S INDICATION OF POSSIBLE LENIENCY.

Even if this Court were to consider the merits of a claim that an impermissible promise of leniency had been made to the defendant by his interrogator, the validity of his confession should remain unaffected. The kind of statements made to the defendant about the consequences of telling the truth would withstand the commendably fair test prescribed in a New York Statute: Did the promise present a "substantial risk" of a false confession? Art. 60.45, N.Y. Cr. Proc. Law, Book 11-A, McKinney's Consolidated Laws of N.Y.

CONCLUSION

Amici urge this Court to reverse the ruling of the court below and hold that this Court's rule in *Stone v. Powell* applies equally in cases raising Fifth Amendment-based *Miranda* issues; in the alternative, if this Court rules that collateral review is available in such case, *amici* submit that a confession following warnings is not involuntary merely because the police indicate the possibility of lenient treatment if the accused tells the truth.

Respectfully submitted,

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